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ABSTRACT

The Idaho due process guidelines offered provide information on how exceptional children and their parents will be accorded procedural safeguards in decisions regarding identification, evaluation, and educational placement. Included are due process practices for (1) parental initiation of special education services, (2) school initiation of special education services and programs, (3) parental consent for testing and placement, and (4) informal hearings and hearing mediators. Also covered are confidential management practices for Idaho school records of exceptional children. (Author/SB)

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Guidelines

DUE PROCESS PROCEDURES FOR IDAHO'S EXCEPTIONAL STUDENTS

December, 1975

Idaho State Board of Education

Idaho State Department of Education

Roy Truby
State Superintendent of Public Instruction
Boise, Idaho

EC 081662

Each child in Idaho is entitled to an educational opportunity related to individual abilities, background, and goals. Among our students are those who have special learning needs. Appropriate special education opportunities are available to these students.

The due process guidelines included in this booklet amend Section II. Procedural Safeguards Idaho State Plan Amendment, FY 1975, Part B, Education of the Handicapped Act. This booklet also provides helpful suggestions which will assure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of exceptional children.

Sincerely,

Roy Truby

ROY TRUBY
State Superintendent
of Public Instruction

Foreword

Federal and state laws guarantee appropriate educational opportunity for all exceptional children. Due process procedures further assure that such educational opportunities will be realized.

Due Process Procedures for Idaho's Exceptional Students has been prepared as a policy statement for school personnel and parents of exceptional children, and was approved by the State Board of Education December 4, 1975. These procedural guidelines are intended to prevent misunderstandings arising in the identification, evaluation, and/or placement of exceptional children, and to provide for the fair resolution of concerns which may affect the education of these children.

Frequent communications between home and school reduce the situations which may lead to formal due process procedures. However, each school district is encouraged to develop and disseminate local plans based on these guidelines. Non-compliance with the minimum procedures in this publication could result in recommendation by the State Department of Education to the State Board of Education that school district funds be withheld.

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Part I BACKGROUND FOR DUE PROCESS OF LAW

Idaho Legislation for Exceptional Children

"Each public school district is responsible for and shall provide for the education and training of their resident exceptional pupils. Every public school district in this state may provide instruction and training for persons to the age of 21 who are exceptional as defined by the state board."

Idaho Code
Section 33-2001

"'Exceptional children' means those children whose handicaps or capabilities are so great as to require special education and special services in order to develop to their fullest capacity. This definition includes, but does not limit itself to, those children who are physically handicapped, mentally retarded, emotionally disturbed, chronically ill, or who have perceptual, visual or auditory handicaps or speech impairment, as well as those children who are so academically talented that they need special education programs to achieve to their fullest potential."

Idaho Code
Section 33-2002

Guarantees for Fair Opportunity

"No person shall....be deprived of life, liberty, or property without due process of law...."

United States Constitution
Fifth Amendment

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution
Fourteenth Amendment

Idaho's Policies Guaranteeing Due Process for Exceptional Children

"Due process shall include: a) parental or guardian consent for testing and placement, b) notice and request for consent to parents/guardians prior to any placement or denial of placement in a special education program, c) notice to parents or guardians prior to any evaluation of their child for educational programming, and d) periodic review of the child's educational placement or assessment of progress." Due process shall also include maintenance of confidentiality of student records or assessments of the child's comprehensive evaluation or educational program.

Administrative Rules and Regulations for Special Education, Feb. 1975

Section 2.2.3.3, page 9

Part II DUE PROCESS PROCEDURES

School Practices with Exceptional Students' Programs

Idaho public schools provide education for all children within their districts. Among these children are some who are handicapped or exceptional in their ability to learn. Local school district policies and procedures for student rights and responsibilities apply to all students.

In providing special programs for exceptional students, however, certain procedures require additional attention. These procedures include: written parental permission for testing and placement of exceptional children; placement representing the least restrictive of alternatives; provision for informal hearings, hearing mediators, and alternative routes to resolve questions of special educational placement; and school district communication of these possibilities to parents, guardians, or surrogate parents of exceptional children.

Parental Procedures to Begin or Change Special Education Placement for their Child

Parents should contact the school district superintendent if they believe their child is exceptional in his or her educational needs, if no appropriate special education services exist, if the child has not previously been served, or if a change in the present special education placement is requested.

Upon written parental consent, the superintendent can then make arrangements for the district Selection and Placement Committee to conduct a comprehensive assessment of the child. If the school district personnel are not available, contractual services from nearby school districts, as well as public or private agencies may be used. Further assistance can be obtained from the State Department of Education.

School personnel will recommend an educational program for the child based on findings of the comprehensive assessment. If parents give permission, the child's program can begin immediately. If parents do not give their permission, no placement or change in the child's program can be made until agreement can be reached.

Parents who are not satisfied with the school's program for their child or a proposed change in the child's educational placement may request an informal hearing. In order to arrange the hearing, parents, guardians, or surrogate parents of the exceptional child should notify the school district superintendent, who will communicate the request to the State Department of Education. Except in a few instances, it is not expected that informal hearings will need to be initiated. Most parental concerns about the educational placement of exceptional children can be resolved through informal discussions or conferences with local school district personnel.

Parental Permission for Testing

When there is a reason to believe that a child may benefit from a special education program, written permission for testing must be obtained from the parent before any formal testing is initiated. The written permission should be on file in the school records for the child involved.

The written request for testing permission should be in the primary language of the home and should state the reasons for the testing. Within the request letter, the parents should be advised that they may refuse permission for testing. They also should be invited to review all relevant school records before the testing and to review with school personnel the results of the testing after it has been completed.

No testing may proceed until parents give written permission for testing. When written parental permission for testing is on file with the school, comprehensive educational assessment of the child may be conducted.

Parental Refusal for Testing If the parents refuse to give permission for testing, the school should try to meet with the parents to discuss the situation. If agreement cannot be reached, the school may not initiate formal comprehensive evaluation of the child thought to be in need of a special education program or service.

Parent Failure to Respond If a parent does not respond to the school's repeated attempts by mail, phone and/or home visit to obtain testing permission, the school may go ahead with the comprehensive assessment of the child. Repeated attempts to contact the parent should be documented and kept on file.

The school should provide notice to the parents that they may review records, will be informed of testing results and proposed educational placement, and may request an informal hearing.

Informal Hearings

Prerequisites to an Informal Hearing Within five days of a parental request for a hearing, the school district personnel should schedule a conference with the parent to review the situation to date for the purpose of settling any differences and, if possible, avoiding the hearing. If resolution cannot be achieved at the conference, or if there is insufficient communication to convene such a conference, the informal hearing will be scheduled. Before the actual hearing the following steps should be taken:

1) Written notice of the proposed change in a child's educational program should be provided to the parents;

2) Parents should be allowed to inspect and copy at their expense school reports, files, and records pertaining to the child;

3) Parents should have the opportunity to obtain an independent evaluation of the child's educational needs at their expense;

4) An impartial mediator will be assigned by the State Department of Education upon notification by the district school superintendent and within ten days of such notice;

5) The mediator should provide to parents, school officials, and the State Department of Education notification as to the time and place of the informal hearing; the date of the hearing must be within forty days of original request; and

6) Parents may request attendance at the hearing of any officer, employee or agent of the school or State Department of Education who may have information relevant to the question of the needs, abilities, and/or proposed status of the child.

The Mediator The person assigned to preside at an informal hearing must be able to assure that proper procedures are followed and that the rights of the parties are protected. An impartial mediator must be unbiased, disinterested, and independent of either the local school district or the State Department of Education.

Upon initiation of hearing procedures by the parent, it shall be the responsibility of the school superintendent to notify the State Department of Education of such proposed action. In addition, the superintendent has the responsibility of informing the district school board of such action. Within ten days, a mediator will be assigned by the State Department of Education.

As long as Title VI-B funds or other federal or state financial resources are available, compensation of mediators will be the responsibility of the State Department of Education.

Surrogate Parents In educational matters which normally involve parents or guardians, surrogate parents may also represent the interests of the exceptional child. Children for whom surrogates may exist include those in foster homes, state institutions, and detention homes.

Surrogates have the same opportunities and responsibilities as parents in education decisions of identification, evaluation, and special education placement. They may give or withhold consent for proposed testing and/or special education placement. They may also request informal hearings.

Procedures at the Hearing The informal hearing should be conducted in accordance with the following procedures:

1) The mediator will preside and should conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions,

2) Parents and the school may have representatives, including legal counsel or other professional persons, attend the hearing;

3) The hearing should be open to the public unless the parents request a closed hearing;

4) Parents, school personnel, and their respective representatives should have an opportunity to question all presenters at the hearing;

5) If the child is over the age of 18, he or she may attend the hearing;

6) If the child has not reached the age of 18 the parents have the right to determine whether he/she should attend the hearing; if the mediator finds that attendance by the child would be harmful to his/her welfare, he may recommend that the child may be excluded from portions of or the entire hearing; and

7) During the informal hearing, interpreters for the deaf or interpreters fluent in the primary language of the home should be available.

Record of the Hearing A tape recording or other verbatim record of the hearing should be made. Such a record shall remain with the State Department of Education. Parents and school district personnel may have access to this record upon formal request at minimal expense for reproduction, if necessary.

Recommendations of the Mediator The mediator's recommendations should be issued in accord with the following:

1) The written recommendations should be sent to parents, the school district superintendent, the State Department of Education, and to their respective representatives (should they request written notification at the close of the informal hearing);

2) The recommendations should include findings of fact, conclusions, and the supporting reasons for the final recommendations;

3) The recommendations of the mediator should be based solely on presentations made at the informal hearing;

4) A summary of the proceedings at the hearing should be made including any materials or statements specifically requested by any of the parties to appear in the record;

5) Upon request of the parents or the school, a copy of the tape recording or other verbatim record of the hearing will be provided by the State Department of Education;

6) A statement must be included that the mediator's recommendations are those of an impartial third party, are not binding on either party involved in the hearing. Recommendations of a mediator will assist the school district and the parents to resolve differences in matters of educational evaluation and special education placement and/or may be preliminary to further actions resolving the matter. Alternatives to further action include:

   1. Informal hearings requested with the State Superintendent of Public Instruction;
   2. Informal hearings requested with the State Board of Education; and/or
   3. Formal court proceedings.

Notice of Change in a Child's Educational Program

Educational programs for exceptional children are often more flexible than programs for regular students. However, no placement into or out of regular and special education

classes, or major changes within the child's special education program, can be made without notification and consent of the child's parents. The proposed educational change should be explained both orally and in writing in the primary language of the home.

The written notice should explain the reasons why the proposed change is being considered for the child, what the alternatives are, and why the proposed educational change represents the least restrictive of the alternatives available.

The notice to parents should also mention on what basis (tests or reports) the proposed change is made. Parents may inspect school records and have copies of records made at reasonable cost to them. They may request an informal hearing should they object to proposed changes in their child's educational program, and the notice should remind them of this possibility.

Parents may obtain an independent educational evaluation, should they disagree with the assessment made by school district personnel. A list of local and regional agencies which supply such services at no cost or at minimal cost to the parent can be made available by the school to the parents.

Periodic Review of Educational Placement

Idaho's special education regulations call for an annual review to be made of each exceptional child's placement on the basis of the child's progress within that placement. "Annual" is interpreted to mean once near the end of each school year.

Parents of students in regular programs are often invited to periodic parent-teacher conferences in connection with their children's progress. In the same way, school personnel are encouraged to invite parents of exceptional children to annual conferences reviewing the progress of their children.

At least a week before each review conference, written communication should be sent to parents by the school. It should explain the time and place of the meeting, the reason for the conference, and the specific tests and/or evaluation procedures which will be used to assess progress.

Independent Educational Evaluation

Parents should be provided the opportunity to obtain an independent educational evaluation other than the school's comprehensive assessment of the child. This independent evaluation will be an expense of the parent. The extent of the evaluation would depend on the nature and severity of the handicapping condition.

The school should provide to parents the names, addresses and telephone numbers of public agencies where independent educational evaluation services can be obtained at no or minimal expense.

Least Restrictive Educational Setting

Handicapped children will be educated with non-handicapped unless the severity of the handicap makes other arrangements necessary.

When an exceptional child must be assigned to a special program, educational goals should be set. If and when these goals are met, the child should be returned to as near to normal setting as is possible. Reassessment of educational goals and objectives should be made for each student annually (no later than eight months after placement) and during each school year.

The school district is required to inform the State Department of Education of the types of program alternatives available in connection with state

approval for funding. If gaps or deficiencies exist which limit the range of placement possibilities, the State Department will notify the school to supply a plan, with timelines, to provide program alternatives.

When there is evidence to suggest that the school is not following the least restrictive alternative policy, procedures should be worked out between the State Department and the school to bring the child back into a less restrictive program. These procedures may include: 1) inservice training for regular and special education personnel in accommodation of exceptional children in the regular classroom; 2) State Department technical assistance to a school district on both an individual basis and through regional/statewide conferences; and 3) monitoring of the educational progress of the child whose placement is under consideration.

Non-discriminatory Materials and Procedures

Section 2.2.3.3 of Idaho's Administrative Rules and Regulations for Special Education indicates that schools must "select and utilize screening, testing, and evaluative instruments which are not racially or culturally discriminatory."

Any tests or evaluative instruments which discriminate against students due to language, racial or cultural differences must be modified and/or interpreted with respect to the language, culture or background of students being tested.

Verbal and written school-parent communications where English is not the primary language of the home should be both in English and in the language spoken.

Interpreters for deaf parents should be provided in situations where informal or formal verbal communications are involved.

Burden of Proof

The final responsibility of an appropriate educational opportunity for a child lies with the child's parents. The local school district may not proceed with comprehensive evaluation and/or special education placement of a child thought to be exceptional if the parent refuses to give written consent for such evaluation or placement. Nor may the school district personnel request an informal hearing in an attempt to prevail over parent-made decisions.

Documentation of teacher referrals and anecdotal records, testing or evaluation procedures and results, and chronological records of communications with parents are the responsibility of school personnel and may be used as information, along with other records, at any stage in the appropriate educational planning for an exceptional child.

Part III CONFIDENTIALITY: Management Guidelines for Records of Students

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act, enacted as part of the Education Amendments of 1974, Title V, Section 513-514, establishes that parents of all children have access to their children's school records, and limits the disclosure of personally-identifiable information from school records without parental consent.

Records of Exceptional Students

School records are interpreted to include: identifying data, academic work completed, level of achievement, and attendance data; scores on standardized intelligence, aptitude and psychological tests, including results of the child's comprehensive evaluation/assessment; interest inventory results, health data, family background information, teacher or counselor ratings, observations and verified reports of serious or recurrent behavior problems.

Two separate types of school records may not be kept. However, confidential personal working files of school psychologists, social workers, counselors, teachers or substitute teachers may be maintained. Personal and confidential files containing working notes, transcripts of interviews, clinical diagnoses and memory aids for their own use are permissible. Data considered to be personal property should be in the possession of the professional, and used only by that individual.

Where the consent of a parent is required for the release of educational records, permission shall be in writing, be signed and dated by the person giving such consent. It shall include reason, records to be released, and the names of the parties to whom the records will be released.

The school may, without consent of parents, release a student's permanent record file to the following:

1) Other school officials, including teachers, within the district who have a legitimate educational interest;

2) Officials of other schools in which the student intends to enroll; however, parents must be informed of the transfer, receive a copy of the record, if requested, and have an opportunity for a hearing regarding the content of the record; and

3) Authorized representatives of: a) Idaho State Department of Education; b) Secretary of U.S. Department of Health, Education and Welfare; or c) Comptroller General of the United States.

The school or any school personnel may not divulge, in any form, to any persons other than those listed above, any information contained in school records, except:

1) With written consent from the student's parents specifying records to be released and to whom; a copy of the records to be released must be sent to the student's parents, if desired by the parents; and/or

2) In compliance with judicial order of administrative agencies having the power of subpoena; parents should be notified of all such orders and the school's compliance.

Annual Notification of Parents

Annual oral and written notification must be made to parents that their child's individual records are available to them for review. The school district shall outline the procedures to be followed if the parent wishes to review the records, or participate in the annual review of educational placement.

Record Retention Practices

All personally-identifiable data which labels a child as handicapped or which indicates a child has been placed in a special education program must be physically destroyed by shredding or burning within five years from the time that educational services to the child are terminated or the child graduates from secondary school. Routine school data such as permanent records may be retained.